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June 13, 1997

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Federal Communications Commission
Office of Secretary
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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 87-268


Dear Mr. Caton:

On behalf of Malrite Communications Group, Inc., there is transmitted herewith and filed an original and four (4) copies of its "Petition for Partial Reconsideration".

Should any question arise with regard to this matter, kindly communicate directly with this office.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: 
Bruce A. Eisen

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WASHINGTON, D.C. 20554

Federal Communications Commission
Office of Secretary

TO: The Commission

Malrite Communications Group, Inc. ("Malrite"), by its attorneys, hereby submits its Petition for Partial Reconsideration in the above-captioned proceeding. While Malrite largely supports the Commission's approach to the Digital Television Table of Allotments adopted in the Sixth Report and Order¹, nevertheless, partial reconsideration is warranted because of certain inequities built into the table and because the Commission has not adequately addressed a number of relevant matters. In support thereof, the following is shown:

1. Malrite is either affiliated with or the direct licensee of a number of television broadcast stations operating

¹ MM Docket No. 87-268, FCC 97-115 (released April 21, 1997).

in markets within the United States and Puerto Rico. It has an ongoing and deep interest in the significant topics covered by the Commission in both the Fifth Report and Order² and the Sixth Report and Order, and it has filed extensive comments throughout the proceeding.

2. Malrite has pioneered technological and program innovations and has enthusiastically applauded the arrival of the Advanced Digital Television Service in order to improve quality pictures and simultaneous multi-casting. In our prior-filed comments, we addressed a number of issues that we believed the Commission should consider, including initial power levels which Malrite urged the Commission to determine through the use of service area replication. The agency did not utilize the suggested methodology. Consequently, a number of television stations were seriously disadvantaged as reflected in Appendix B to the Sixth Report and Order. Malrite now raises several questions for reconsideration.

SERVICE DISADVANTAGE

3. The Commission has provided unacceptably low power to certain DTV channels placed on VHF frequencies, with the

² MM Docket No. 87-268, FCC 97-116 (released April 21, 1997).

concomitant result that the affected facilities will serve less than 95% of their NTSC service areas. The disadvantaged stations include Malrite's Station WOIO-TV at Shaker Heights, Ohio. It will offer DTV service to the public which fails dramatically to replicate its present NTSC Grade B contour.

4. Station WOIO-TV has been assigned Channel 10 in the Cleveland, Ohio market at a power level of 3.5 kw. It will not approach matching its present service area as reflected by the 90% congruence figure included within Appendix B to the Sixth Report and Order. While that disadvantage, by itself, reduces WOIO-TV's competitive position in the television market, it is important to note that other television facilities in that market will operate at better than 95% of their NTSC service areas utilizing power levels up to 1,000 kw.³

5. Among the Malrite stations, WOIO-TV faces the greatest disadvantage in the absence of partial reconsideration. However, the attached Engineering Statement sets forth a number of considered suggestions aimed at improving the rules derived from the Sixth Report and Order. Each has profound applicability to

³ There is more to the disadvantage than diminished competition. Malrite provides a highly innovative programming package to its service area which includes a substantial local news presence in the market. To the extent that WOIO-TV's coverage would be reduced, an important element of the public interest would also be lost.

the various Malrite stations and, presumably, to many television facilities throughout the country. The points expressed in this petition are offered in good faith and with the intent that the Commission's valued work can be enhanced even more with some additional fine tuning.

6. Of particular importance is the map annexed to the Malrite Engineering Statement.⁴ The map, which relates to WOIO-TV, depicts the relevant NTSC service area and takes into account service area that is lost because of interference from other NTSC stations or new interference from DTV stations. The map portrays significant problems not readily apparent from a review of the Sixth Report and Order. It shows, in the case of WOIO-TV, that

⁴ The map was developed by NAB and MSTV, and is premised upon the April 3, 1997 version of the FCC engineering database. NAB/MSTV explains that the operating parameters of the NTSC operation taken from that database include tower location, antenna height above average terrain (HAAT), directional antenna pattern (if any), and effective radiated power (ERP). From this information, the conventional predicted Grade B contour using the FCC propagation curves is plotted in black.

Within this predicted Grade B area, service area losses are plotted (as radial lines every one degree and evaluated every one km along each radial) for the effects of terrain using the Longley-Rice propagation model (marked in red), interference from either other NTSC stations (marked in green) or DTV stations (marked in blue) that exceed the criteria established by the FCC for acceptable viewing. The service area that remains is the white area within the Grade B contour. Service outside the predicted Grade B contour is not evaluated.

stations may not be able to effectively compete because of severely restricted coverage. WOIO-TV's present NTSC signal receives interference in the western portion of its service area, which further diminishes coverage already shrunk due to NTSC interference.

7. Importantly, while the Sixth Report and Order contemplates negotiations to enable licensees to propose DTV facilities which more closely match their coverage requirements on the assigned channels, a station which finds itself seriously diminished by poor coverage may lack the ability to successfully negotiate with others in order to better achieve some semblance of replication.⁵

SUGGESTED MEASURES TO ADVANCE THE COMMISSION'S POLICIES

8. The Engineering Statement discusses separate and applicable points of reconsideration in the context of each Malrite station. However, in all cases, the Commission should

⁵ See Section 73.622(c). The attached Engineering Statement explains why negotiations must be allowed both intra-market and inter-market. It appears that the Commission has provided only for negotiations between stations in the same market. Sixth Report and Order, par. 172. In the case of WOIO-TV such a limitation could seriously impact its ability to counter interference through negotiations. See Engineering Statement, p.3, referring to WOIO-TV's NTSC facility.

require and incorporate into its rules minimum receiver standards. If it does not, the very fabric of the DTV allocation scheme could be compromised. Already, questions of tuners that perform to minimum standards have arisen within the industry. Replication cannot be achieved if the receivers employed by the public do not measure up to the requirements assumed by the DTV Allotments/Assignments set forth in the Sixth Report and Order. The Commission can assure the integrity of its Table by specifying appropriate standards.

9. Malrite further urges the Commission to modify the "must carry" rules so that cable systems become compatible with new DTV formats. As the Engineering Statement reveals, Malrite Station WFLX-TV at West Palm Beach, Florida, serves 945,000 cable households out of 1,462,300 total households. If DTV service to cable subscribers is to move smoothly into the new century, the Commission must require cable companies to adopt appropriate digital technologies compatible with broadcast DTV standards. Fortunately, there is presently a Commission proceeding that would allow the Commission to consider cable compatibility. See, Fourth Notice of Proposed Rulemaking, MM Docket No. 87-268, 10 FCC Rcd 10541 (1995). Standards for cable digital transmissions are clearly desirable, and the Commission should act accordingly.

10. Other matters which Malrite believes the Commission must come to terms with on reconsideration include the release of all allocation criteria to allow licensees to propose adequate engineering exhibits for the impending construction permit applications and channel reallocations. For instance, *OET Bulletin Number 69* remains unreleased despite the fact that it contains the Commission's methodology for the calculation of interference and contours as they pertain to the allocation process. Absent the Bulletin, there is no way to determine what constitutes de minimis interference or the manner and fairness in which market allocations have been accomplished. Arguably, the Commission should have deferred the window in which to file for reconsideration of the Fifth and Sixth Report and Orders until such time as this basic information was released to the public. At the very least, the Commission must allow comment after the untimely release of *OET Bulletin Number 69* so that the reasonableness of DTV allocations can be evaluated by all interested parties.

11. Malrite's Engineering Statement also points to likely delays in the implementation of WOIO-TV's DTV service because of the uncertainty surrounding Canadian concurrence and suggests that WOIO-TV be granted experimental authority to operate the

station in the interim so that Malrite and the Commission may effectively assess whether or not WOIO-TV's Channel 10 assignment is appropriate for permanent DTV channel use. The Sixth Report and Order, par. 171, notes the Commission's belief that the DTV Table is "generally acceptable" to the Canadians. However, implementation of WOIO-TV's DTV facilities will require a very substantial capital investment. Without the certainty of Canadian concurrence, it is difficult to justify such an investment. Experimental authority would allow for a determination as to whether DTV Channel 10 is truly suitable.

12. Malrite urges the Commission to add a realistic measure of flexibility to its process at the time that DTV applications are filed. This would allow DTV stations to negotiate interference areas with both DTV and NTSC facilities so that service could be maximized within respective ADIs. As stated, supra, it is essential that negotiations be permitted both locally and in other markets so that existing NTSC licensees are enabled to propose DTV facilities which more closely match their coverage requirements on their assigned channels. In the case of WOIO-TV, the chances of competitive viability are diminished without the ability to increase power on Channel 10, its assigned DTV channel. This could be accomplished through broader

allowable negotiations and through the possible use of a directional antenna.

13. Malrite further requests the Commission to adopt a "fast track" process to change DTV channel assignments if that would result in closer NTSC/DTV "service area matching". Hence, frequency swaps could be permitted and speedily approved if the service area matching for all involved DTV facilities was improved, and if the NTSC interference caused to other facilities involved the same or a fewer number of persons.

CONCLUSION

14. The Commission has furthered the development of a new era of television by adopting the DTV Table of Allotments. It is to be expected that some imperfections and unaddressed matters would result from such a significant document. Malrite believes that the new rules cannot be implemented without additional consideration of several important questions as well as the Commission release of presently unavailable technical data.

In light of the foregoing, the Commission should reconsider the Fifth and Sixth Report and Orders in accordance with this petition.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

By: Bruce A. Eisen
Bruce A. Eisen
Its Attorney

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20554

June 13, 1997

ENGINEERING STATEMENT

In Support of Partial Reconsideration

In re:

MM Docket 87-268
Sixth Report and Order
Advanced Television Systems

By:

Malrite Communications Group

This Engineering Statement is written by Ralph E. Evans, of Evans Associates Consulting Telecommunications Engineers in Thiensville, Wisconsin, on behalf of Malrite Communications Group, licensee of several television broadcast stations immediately impacted by the *Sixth Report and Order* in MM Docket 87-268.

Abstract

Malrite has continually provided comments and information to the FCC throughout the Rulemaking process leading to the migration to advanced television systems. As a pioneer in advanced broadcast techniques, Malrite believes that the benefits of its broadcasting experience is valuable to the FCC as the DTV Rules are finalized.

In the largest measure, Malrite commends the FCC for a well considered and carefully crafted digital television plan as it is represented by the *Sixth Report and Order*. Malrite believes, however, there are several issues which should be addressed in reconsideration, resolving inconsistencies and conflicts which could otherwise lead to unintended disadvantages to some broadcast facilities which have been serving the public for many years:

1. Additional flexibility at the application stage, permitting both inter-market and intra-market negotiations, so that existing NTSC licensees can propose DTV facilities which more closely match their coverage requirements on their assigned channels.
2. A "fast track" process for changing DTV channel assignments, if it results in closer NTSC/DTV "Service Area Matching" for all affected stations. Both inter-market and intra-market changes would be allowed at the construction permit stage.
3. Minimum receiver standards should be employed, to ensure that the assumptions upon which the allocation process is based have validity in the real world.

4. Temporary increased power operation for DTV facilities, on an experimental authority basis and regardless of theoretical interference, as needed to assess field anomalies and to document real-world interference.
5. Modification of cable "must carry" rules to ensure compatibility with DTV formats.
6. Release by the FCC of all pertinent allocation criteria, so that effective engineering exhibits can be prepared for construction permits and channel re-allocations.¹

The following discussion illustrates the application of the suggested modifications to the DTV transition rules to the Malrite-owned facilities in Shaker Heights Ohio, Toledo Ohio, Cincinnati Ohio and West Palm Beach Florida.

1. The following stations are owned by Malrite Communications Group.

WOIO Shaker Heights, Ohio

WOIO DTV Facility

WOIO has been assigned channel 10 in the Cleveland Ohio market at a power level of 3.5 kilowatts. Presently, WOIO operates at 3720 kilowatts at a height of 351 meters, and competes with a full complement of network and independent stations operating full-power VHF and UHF facilities. The 3.5 kilowatts assigned to WOIO does not nearly match the present service area, as evidenced by the 90.2% congruence figure as tabulated by the FCC in Appendix B of the Sixth Report.

Since all of the other competing facilities in the Cleveland market exhibit a higher order of contour matching, and since all but one of the competing facilities is matched to within 99%, it is Malrite's belief that a viable DTV facility would require the ability to increase power on its assigned DTV channel or, if proper agreements and authorities could not be obtained, a channel reassignment. This would require application of suggestions one and two as tabulated above.

As a further consideration, WOIO faces possible delay in the implementation of its DTV facility due to the uncertainty of Canadian concurrence. WOIO would therefore apply for experimental authority to operate its station in the interim at a power level up to 7.0 kilowatts, which would increase the contour match to 93%, and which would serve an additional 93,600 persons and 66,278 square kilometers. This application would be done as per suggestion number four above, and would facilitate field readings and interference calculations. These readings and calculations would be then tabulated and shared with the

¹ As this statement is written, the engineering community is still awaiting the release of OET Bulletin Number 69, which describes the application of the Longley-Rice technique for calculation of interference and contours as it pertains to the ATV allocation process.

FCC, and would also be used to determine whether channel 10 would be suitable for use as the permanent DTV channel.

WOIO NTSC Facility

As per Appendix B of the *Sixth Report*, WOIO's present NTSC signal receives interference in the western portion of its service area, which further diminishes coverage already shrunk due to NTSC interference (see attached map Figure 1).

As can be seen, extensive interference will be taken by WOIO as a result of the present assignment table and the presently established DTV power levels. As detailed above under suggested points one and two, WOIO should be given the tools to mutually work out an acceptable compromise with interfering facilities on a *inter-market* basis.

WXIX Newport Kentucky

WXIX DTV Facility

WXIX is licensed to Newport, Kentucky, and competes in the Cincinnati Ohio market. Channel 29 has been assigned to WXIX for DTV operation, using 247.6 kilowatts at 306 meters HAAT. WXIX serves a total of 1,222,160 households, of which 798,090 are cable households. After the change to DTV, two factors will be critical to market acceptance of the new signal:

- Availability of television receivers and antennas which meet or exceed standards assumed in the allocation process (as per issue number 3 above).
- Ability of the "Must Carry" cable systems to properly transport the DTV signal (issue number 5 above).

WXIX NTSC Facility

The present WXIX NTSC facility has viewers in three states: Ohio, Kentucky, and Indiana. Interference is taken from assigned DTV facilities in the south-east portion of the Grade B contour, encompassing portions of Ohio and Kentucky. If inter-market negotiation is enabled, WXIX will immediately negotiate with other DTV stations so that the best service possible is delivered in both the NTSC mode and the DTV mode during the transition period.

As detailed in suggestion number six above, the preparation of an allocation engineering analysis depends upon public availability of as much information as possible concerning the details of the allocation process. Beyond OET #69, this would include all weighting factors used in assigning channel preferences. With this information in hand, Malrite requests that any channel changes which result in a net "improvement" (as per issue number two above) be accomplished on a "fast track" one-step basis as follows:

- The channel change is requested as part of the application for construction permit, accompanied by the pertinent engineering showing.
- The public notification indicates that a channel change is being requested, and that all competing applications must be filed prior to the cut-off date.
- If no competing applications are received, and no petitions to deny are filed, the channel change is made and the 301 is granted.
- If mutually exclusive applications are received, applicant can either employ the traditional route of petition for channel change, or can modify the proposal to use another channel.

WFLX West Palm Beach Florida

WFLX DTV and NTSC Facilities

WFLX operates on channel 29 and is licensed to West Palm Beach Florida. WFLX has been assigned adjacent channel 28 for DTV operation, using 216.1 kilowatts at 457 meters HAAT. Channel 27 has also been assigned as a DTV channel in the West Palm Beach area, resulting in continuous spectrum being used from channel 27, through 28, to channel 29.

The consensus of the engineering community is that there is substantial uncertainty as to how well three adjacent frequencies will co-exist, especially since one of them is an NTSC channel. Consequently, the ability to negotiate with other licensees, both locally and inter-market, coupled with the "fast track" channel change process would greatly assist WFLX in optimizing its facility with minimum effect upon other stations.

WFLX also serves 945,500 cable households out of 1,462,300 total households, making a smooth DTV cable interface an important service consideration.

WNWO Toledo, Ohio

WNWO DTV and NTSC Facilities

WNWO operates on channel 24 and is licensed to Toledo, Ohio. WNWO has been assigned channel 49 for DTV operation using 302.3 kilowatts ERP and 424 meters HAAT.

As is the case with the other Malrite facilities, both the DTV and the NTSC service areas receive interference. In particular, the present NTSC service area receives approximately 1,812 square kilometers of interference to the south-west.

Maximization of this facility would be assured utilizing the six recommendations listed above.

2. The following two stations are owned by Estrella Brillante, Ltd., co-partnership, controlled by Malrite Communications Group.

WLII Caguas, Puerto Rico

WLII DTV and NTSC Facilities

WLII operates on channel 11 and is licensed to Caguas, Puerto Rico. WLII has been assigned channel 56 for DTV operation using 707.9 kilowatts ERP and 355 meters HAAT.

As is the case with the other above listed facilities, both the DTV and the NTSC service areas receive interference. WLII is further subject to extensive multipath distortion and attenuation due to mountainous terrain. At the present time, the full effect of these anomalies is not known. Use of lower UHF frequencies, or even VHF frequencies, may be necessary in order to provide usable DTV service.

Maximization of this facility would be assured utilizing the six recommendations listed above.

WSUR Ponce, Puerto Rico

WSUR DTV and NTSC Facilities

WSUR operates on channel 9 and is licensed to Ponce, Puerto Rico. WSUR has been assigned channel 43 for DTV operation using 380.2 kilowatts ERP and 857 meters HAAT.

Both the DTV and the NTSC service areas receive interference, and WLII is subject to the same terrain anomalies as listed for WLII above..

Maximization of this facility would be assured utilizing the six recommendations listed above.

Conclusions

Based upon the above information, Malrite believes that it would be in the public interest to include the following provisions in the final ATV Rulemaking:

1. Additional flexibility should be permitted at the application stage so that existing NTSC licensees can propose DTV facilities which more closely match their coverage requirements using their assigned channels. As outlined

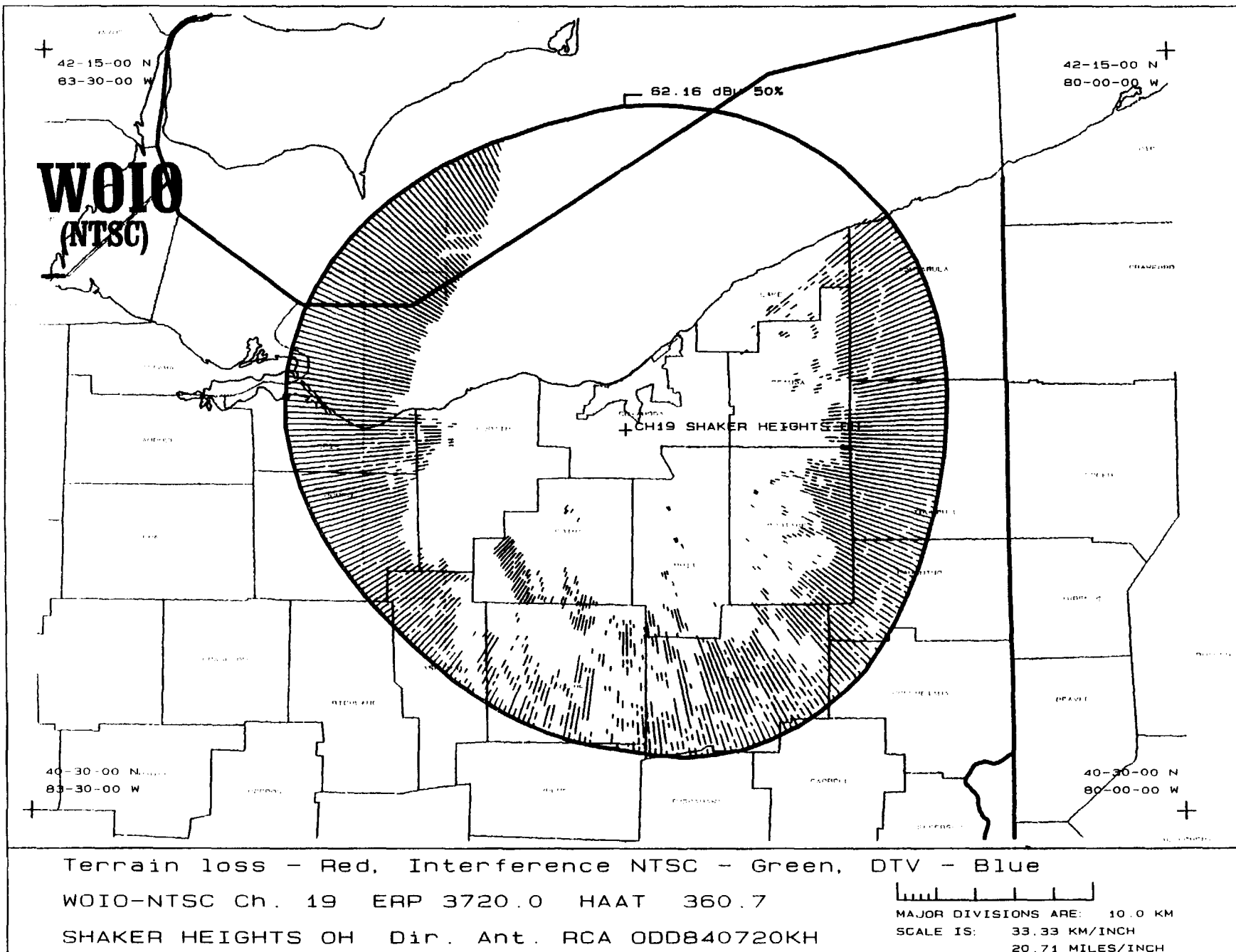
herein, this flexibility would allow DTV stations to negotiate interference areas with other DTV and NTSC facilities, both locally and in other markets, in order to maximize service area within their respective ADIs. In addition, existing NTSC stations could effectively negotiate interference trade-off with newly-operational DTV facilities, which would reduce disruption to the primary broadcast service the public is already receiving during the DTV transition period. Power increases and directional antennas would be employed to achieve the service objectives and to provide the required protections. Interference would be considered to exist only over occupied U.S. land area, and a letter of concurrence would be required in the application for construction permit, signed by all affected parties.

2. A "fast track" process for changing DTV channel assignments should be established, assuming such channel changes result in closer NTSC/DTV "Service Area Matching" for all affected stations. Both inter-market and intra-market changes would be allowed, and consensual frequency "swaps" would be speedily approved if the service area matching for all involved DTV facilities was improved, and if any NTSC interference caused to other facilities involved the same or fewer numbers of persons. Channel change requests would be made at the construction permit application stage, with sufficient time given by the FCC prior to cut-off so that competing applications could be filed.
3. Minimum receiver standards should be incorporated, to ensure that the assumptions upon which the allocation process is based have validity in the real world.
4. Temporary increased power operation for DTV facilities should be allowed on an experimental authority basis, regardless of theoretical interference, as needed to assess field anomalies and to document real-world interference. Such authority would be granted at a power level not to exceed 200% of authorized DTV power in any direction which interference would be caused.
5. Modifications should be made to cable "must carry" rules to ensure compatibility with DTV formats.
6. Release by the FCC of all pertinent allocation criteria, so that effective engineering exhibits can be prepared for construction permits and channel re-allocations.²

It is the opinion of Malrite that these modifications are in the public interest, and should be made in partial consideration of the ATV Docket *Sixth Report and Order*.

² As this statement is written, the engineering community is still awaiting the release of OET Bulletin Number 69, which describes the application of the Longley-Rice technique for calculation of interference and contours as it pertains to the ATV allocation process.

FIGURE 1



AFFIDAVIT

COUNTY OF OZAUKEE

SS:

STATE OF WISCONSIN

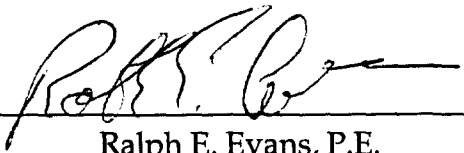
RALPH E. EVANS, being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;


That he is a Consulting TeleCommunications Engineer, and is a partner in the firm of Evans Associates;

That this firm has been retained by Malrite Communications Group to prepare this engineering exhibit;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement, and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief and as to such statements he believes them to be true.


Ralph E. Evans, P.E.

Subscribed and sworn to before me this 12th day of June, 1997.

 My Commission expires Sept 27 2000
Notary Public

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This exhibit and the work it is based on represents our best interpretation of existing information, technical data, FCC Rules and policies, and policies and rules of other agencies. However, these data, rules and policies and their interpretation by the FCC or other agencies are constantly changing. Therefore, we do not warrant this work to be acceptable to the FCC or other agency, that any undertaking based on it will be successful, or that further submittals, administrative actions or litigation will not be required by others in support of this proposal or future undertaking. In the event of errors, our liability is strictly limited to replacement of this document with a corrected one. Liability for consequential damages is specifically disclaimed. Favorable action on this application by the FCC, FAA, or other federal and state agencies, is not guaranteed.

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CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law offices of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 13th day of June, 1997, that a copy of the foregoing "Petition for Partial Reconsideration" was hand-delivered to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
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Commissioner Susan Ness
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Commissioner Rachelle B. Chong
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Toni R. Daluge